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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

██████████  
██████████  
██████████

DECISION

KIN/167656

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 29, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on August 25, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the PSG was correct in denying petitioner's Kinship Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
██████████

█  
█

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Michael DeVine, Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the paternal grandmother of ██████ and had been caring for him and ██████ for about 1 year at the time of the Kinship reassessment.

3. On June 15, 2015 the Kinship Assessor met with petitioner to reassess the Kinship benefit.
4. On July 17, 2015 the PSG notified petitioner that her Kinship Care benefits were discontinued because there was no evidenced need for the children to be placed with petitioner and the children do not meet any of the criteria as a child in need of protective services.
5. Petitioner appealed that decision on July 29, 2015.
6. There was no evidenced need for the children to be placed with petitioner at the time of the reassessment of the Kinship benefit.

### **DISCUSSION**

Eligibility for Kinship Care payments is governed by state law. Wis. Stat. §48.57(3m); Wis. Admin. Code §DCF 58.01. Under state law, a person must satisfy several requirements to be eligible for Kinship Care. Wis. Stat. §48.57(3m)(am); Wis. Admin. Code §DCF 58.10. The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. The petitioner is not a §48.977 guardian.

For Kinship Care cases in which the relative is not a §48.977 guardian, the following condition must be met:

The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interest of the child.

Wis. Stat. §48.57(3m)(am)1; see also Wis. Admin. Code §DCF 58.10(1). PSG discontinued Kinship Care in this case because it determined that there was no need for the children to be placed with petitioner as the children's mother could care for them.

The Department of Health Services set forth a policy pertinent to these standards as follows:

As the relative who receives the Kinship Care payment has no legal obligation to support the children for whom she is caring, the Kinship Care statute mandates there be an established need for the relative to provide care for the children. In addition to being in the best interests of the child, the agency must determine that the child would be at risk of abuse or neglect if returned to his or her natural parent.

DHFS Policy Memo, Vol. 2 of the Kinship Care Questions and Answers, p.23, question 9, issued January 5, 1998. The abuse and neglect statutory sections referenced above – Wis. Stat. §48.13 and Wis. Stat. §938.13, both concern children in need of protection or services. To meet that standard, a child must be the victim of abuse or at substantial risk of becoming a victim of abuse. Or a child's parent must refuse, neglect, or be unable (for reasons other than poverty) to provide necessary care, food, clothing, medical or dental care *so as to seriously endanger the physical health of the child*. Wis. Stat. §48.13(3),(3m),(10) (emphasis added).

In addition, effective February 1, 2002, the Wisconsin Administrative Code, Chapter 58, was repealed and recreated to codify the Kinship Care program. That Chapter (HFS 58) was renumbered to chapter DCF 58 under s. 13.92 (4) (b) 1., Stats., effective in November 2008, and describes the "need" for placement as follows:

- a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
  2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
  3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
  4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

Wis. Adm. Code, §DCF 58.10(1)(a).

In Decision No. KIN-40/ [REDACTED], dated May 22, 2002, the Department's deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child as cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in Wis. Stat. §48.57(3m)(am) - that there be a need for the placement and that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case.

During the reassessment, the Assessor determined that there were no risks in the mother's home that could lead to a CHIPS case. The petitioner identified none either at that time. The father was incarcerated and therefore not considered available for the children's care. The petitioner testified at hearing that the mother "did not want to be bothered with the children" and that petitioner has been taking care of 3 of the 5 of the mother's children. The other 2 children were older and previously in the mother's care; no risks were identified with the other 2 children previously in the mother's care that would impact the determination here.

The agency's decision is made at "a snapshot in time". In other words, I must look at when the agency made its decision, and was the decision made correctly at that time. Based on the information at the time, the family's situation did not meet the requirements for payment under the Kinship Care program. The program was specifically designed to assist relatives caring for a child when the child could not reside with his parent(s). Further, none of the evidence presented at the hearing indicated that there was any risk of harm, abuse or neglect of the children where their physical health was seriously endangered.

This decision does not mean the children have to live with their mother, only that petitioner does not qualify for Kinship payments based on the reassessment. Based upon the information in the record, I must conclude the agency made the correct decision at that time. The petitioner can always reapply if the situation changes.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

For the reasons discussed above, PSG was correct to discontinue Kinship Care payments to petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

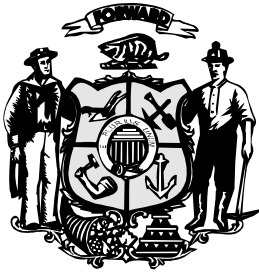
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of September, 2015

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\sKelly Cochran  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 10, 2015.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care